

RETAINER AGREEMENT
City Solicitor Services
City of Taunton

This Retainer Agreement for City Solicitor/Legal Counsel Services ("Agreement") is made and entered into by and between the law firm of Gay & Gay, P.C. ("Gay & Gay" or "Firm") located at 73 Washington Street, Taunton, Massachusetts and the City of Taunton (the "City"), a municipal corporation of the Commonwealth of Massachusetts, with offices at City Hall, 15 Summer Street, Taunton, Massachusetts.

RECITALS

WHEREAS, Gay & Gay is a professional corporation in the general practice of law with extensive experience in the practice of municipal law, and is fully able to carry out the duties described in this Agreement; and,

WHEREAS, The City desires to contract with Gay & Gay to provide legal services to the City on the terms stated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, Gay & Gay and the City agree as follows:

1. RETENTION OF THE FIRM.

The City hereby retains Gay & Gay for the purpose of providing legal services to the City on the terms and conditions stated herein.

2. APPOINTMENT OF CITY SOLICITOR AND ASSISTANTS.

A. Attorney Matthew J. Costa of Gay & Gay shall be appointed City Solicitor ("City Solicitor") of the City of Taunton, and shall serve and be compensated as provided by this Agreement. The City Solicitor shall process, coordinate, and direct, as necessary, all legal services provided under this Agreement in order to maximize the timeliness and usefulness of the delivery of such services. The City Solicitor shall also direct and coordinate all internal activities so that all services provided by Gay & Gay under this Agreement to the City shall be fully competent, professional, consistent, timely, and in accordance with the standards prevalent in the industry. It is expressly understood that the experience, knowledge, capability, and reputation of the designated and appointed City Solicitor are a substantial inducement for the City to enter into this Agreement. The City Solicitor shall be responsible during the term of this Agreement for directing all activities of Gay & Gay on behalf of the City and devoting such time as necessary to supervise such services.

B. Attorney Thomas P. Gay, Jr. of Gay & Gay shall be appointed Assistant City Solicitor. In addition, the present Assistant City Solicitor, Attorney Peter F. Winters, shall be reappointed First Assistant City Solicitor pursuant to a separate employment agreement with the

City. Attorneys Thomas P. Gay, Jr. and Peter F. Winters are collectively referred to herein as "Assistant City Solicitors". The Assistant City Solicitors shall provide those legal services reasonably required to represent the City, and shall take reasonable steps to keep the City informed of progress as to matters to which they are assigned and to respond to City's inquiries.

C. Attorney David T. Gay of Gay & Gay shall be appointed Special Assistant City Solicitor. He shall be assigned to certain matters at the direction of the City Solicitor in consultation with the Mayor. The City Solicitor, Assistant City Solicitors and Special Assistant City Solicitor are hereinafter referred to collectively as the "Attorneys".

C. The City Solicitor may designate such additional attorneys from Gay & Gay as are determined to be necessary to represent the City in legal matters. All attorneys assigned to perform approved City business shall, at all times while this Agreement is in effect and at their sole cost and expense, be fully qualified and licensed to practice law in the Commonwealth of Massachusetts, and before all appropriate federal courts and other bodies and tribunals.

D. Attorney Peter F. Winters shall remain as a City employee pursuant to a separate employment agreement but his work shall be supervised by the City Solicitor.

3. SCOPE OF WORK

A. Gay & Gay agrees to provide the following legal services to the City in exchange for the compensation set forth in Section 4 of this Agreement:

1. One or more of the Attorneys will be available to attend scheduled meetings of the Municipal Council and meetings of sub-committees of the Municipal Council with reasonable prior notice requesting attendance at such meetings.

2. Provide legal services on-site during office hours at City Hall. These hours of on-site service will be at regularly scheduled times made known to the Mayor, members of the Municipal Council and to department heads so as to facilitate informal, direct access to legal counsel as necessary.

3. Attend meetings at City Hall or via conference call as requested by the Municipal Council or the Mayor.

4. Advise the Municipal Council; any City Commissions, Committees, Boards, Authorities or Agencies; City staff and other City officials, on all legal matters pertaining to City business.

5. Prepare, review, and approve as to form, contracts, agreements, resolutions, ordinances, and all other standard legal documents.

6. Prepare such written and legal opinions as shall, from time to time, be requested by the Mayor, Municipal Council and other duly authorized City Commissions or Officials.

7. Perform such other routine legal services as are required, from time to time, by the Mayor or Municipal Council.

8. Represent the City and the City's officials, officers, and employees in litigation and administrative proceedings as directed by the Mayor or Municipal Council, or as may otherwise be required pursuant to the City Charter, City Ordinances or laws of the Commonwealth of Massachusetts.

9. Perform other special projects or tasks assigned by the Mayor or Municipal Council.

10. Prosecution of City Ordinance or Charter violations/Code Enforcement.

B. The scope of work covered by this Agreement does not include matters not listed above or the following types of matters: tax title foreclosures and related proceedings before the Land Court; defense of the City, its officials or employees in litigation, administrative proceedings or other matters in which an insurance company for the City retains legal counsel pursuant to a policy covering the City to provide a defense; the defense of the City, its officials or employees in any criminal proceeding; any matter in which the Firm's representation of the City would present a conflict of interest; and other types of matters which customarily are not handled by the City Solicitor, or which in the opinion of the City Solicitor should be handled by specialized legal counsel.

C. The City specifically reserves with the consent of the City Solicitor the right to retain, at its sole option, other legal counsel for litigation and other specialized legal matters ("outside counsel"). The City Solicitor will oversee outside counsel's work. This reservation of rights does not preclude the City from assigning these matters to Gay & Gay as part of the scope of duties under this Section 3 or requesting recommendations concerning the selection of outside counsel.

4. COMPENSATION

Gay & Gay shall be compensated under the terms of this Agreement as follows:

A. General Legal Services

The City shall pay Gay & Gay a fee of \$25,000.00 per month, hereafter referred to as the "general retainer". The general retainer shall cover, as a flat fee, all services performed by the City Solicitor, Assistant City Solicitor and other attorneys of Gay & Gay, as provided for in Section 1 of this Agreement, that are within the scope of work set forth in Section 3(A) of this Agreement, with the exception of the services of Attorney David T. Gay which are the subject of Section 4(B) of this Agreement. The retainer does not include costs or expenses for outside counsel services as set forth in Section 3(C) hereof. First Assistant City Solicitor Attorney Peter F. Winters shall be compensated solely in accordance with his employment

agreement with the City of Taunton.

B. Services of Attorney David T. Gay.

The services of Attorney David T. Gay shall be invoiced by Gay & Gay separately from the general legal services set forth in Section 4(A), on a monthly basis. Attorney David T. Gay's services shall be billed at a rate of \$180.00 per hour, and shall not exceed \$3,500 in any month. The invoices relative to Attorney David T. Gay's services shall be itemized with respect to the services which he has performed.

C. Specialized Legal Services/Special Projects

Specialized projects and legal services assigned to Gay & Gay, P.C. and not otherwise included within the scope of this agreement shall be billed to City at the rate of \$275.00 per hour. Any such matters require prior approval of the Mayor. Paralegal services for such projects shall be billed at the rate of \$125.00 per hour. All costs and expenses, except those set forth in Section 4(C) below shall be deemed included in the foregoing hourly billing rates.

The foregoing retainer and billing rates shall remain in effect for two (2) years following the date of this Agreement unless otherwise agreed to by the parties. Thereafter, the retainer and billing rates shall be adjusted annually by mutual agreement of the parties.

D. Billable Activities for General Legal Services/Expenses

Gay & Gay will charge City for actual, necessary costs incurred for all of the following: all costs incurred related to any litigation (civil or criminal) or special projects, including but not limited to, court filing fees, jury fees, deposition costs, reporters' fees, witness fees, outside attorney services (includes service of process fees, arbitrators, and mediators), messenger services, LexisNexis or similar research service for research outside of our prepaid service fee, postage, printing, copying, Fed-Ex or other overnight delivery service, mileage, travel expenses, if applicable, including hotel, air travel and car rentals, parking fees, actual costs for large reproduction projects if performed by an outside service, or \$0.10 per page (b/w) and \$0.30 per page (color) if performed in house, title reports, and any other expense not listed above which is reasonably incurred in connection with performing legal services under this Agreement.

E. Monthly Statements

Gay & Gay shall submit statements of services rendered and all payments due under this Agreement on a monthly basis to the City.

F. Payment

Gay & Gay's invoices shall be issued on or about the 5th day of each month following the close of the month for which legal services have been provided. Said invoices shall be due and payable within thirty days following receipt by the City.

5. CONFLICT OF INTEREST

Gay & Gay shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, Gay & Gay shall immediately notify the Mayor. In determining whether a conflict of interest exists as to any particular matter, Gay & Gay will follow the Massachusetts Rules of Professional Conduct as adopted by the Massachusetts Supreme Judicial Court and the rules and regulations of the State Ethics Commission, as applicable.

6. INDEPENDENT CONTRACTOR

Gay & Gay shall perform all services required under this Agreement as an independent contractor of the City, and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Gay & Gay shall not at any time or in any manner represent that it or any of its employees or agents are City employees.

7. DISPUTE RESOLUTION

If any dispute or disagreement arising between the City and Gay & Gay as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the City and Gay & Gay, the quality of the services rendered, and the billing of such services, the City and Gay & Gay agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute for resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties, and be binding on them. This provision for mediation is an effect to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

8. INSURANCE AND INDEMNIFICATION

A. Insurance

1. Gay & Gay shall procure and maintain, at its cost:
 - a. Commercial General Liability insurance with limits of not less than \$1 million per occurrence. Such insurance shall designate City, its elected and appointed officials, employees, and volunteers as additional insureds. Such insurance shall be primary and not contribute with any insurance or self-insurance maintained by City.
 - b. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned, and hired automobiles.
 - c. Professional liability insurance with limits not less than \$2,000,000 per occurrence.
 - d. Workers' compensation insurance as required by Massachusetts law and Employer's Liability insurance with limits not less than \$1 million per accident for bodily injury or disease. The workers' compensation insurance shall contain an endorsement stating the insurer waives any right of subornation against City, its elected and appointed officials, employees and volunteers.
 - e. The insurance coverages for First Assistant City Solicitor Peter F. Winters shall be in accordance with existing insurance coverages for City employees and not part of the insurance coverages from Gay & Gay.
2. All such policies shall provide for 30 days of notice to the City prior to cancellation.
3. Prior to commencement of work, and throughout the term of this Agreement, Gay & Gay shall furnish City with certificates evidencing compliance with the insurance requirements above. Gay & Gay agrees to provide complete, certified copies of all required insurance policies if requested by the City.

B. Indemnification

Gay & Gay shall defend, indemnify, and hold harmless the City, and its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury to person(s) or damages to property (including property owned by the City), and for errors and omissions committed by Gay & Gay, its officers, employees, and agents, arising out of or relating to Gay & Gay's performance under this Agreement, except to the degree such injury, damage, error(s) or omission(s) may be caused by City's negligence or willful misconduct, or that of the City's officers or employees.

9. RECORDS AND REPORTS

A. Records

Gay & Gay shall keep such records as shall be necessary to perform the services

required by this Agreement and to enable the City to evaluate the performance of the required services. The City shall have full and free access to such records that deal specifically with the services performed by Gay & Gay for City at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records.

B. Ownership of Documents

All reports, records, documents, and other materials prepared by Gay & Gay, its employees and agents in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request by the City or upon termination of this Agreement. Gay & Gay shall have no claim for further or additional compensation as a result of the exercise by the City of its full rights of ownership of the documents and material hereunder. Gay & Gay may retain copies of such documents for its own use.

C. Release of Documents

No report, record, document, or other material prepared by Gay & Gay in the performance of services under this Agreement shall be released publicly without prior approval of the City, except as may be required by law.

10. NONDISCRIMINATION

Gay & Gay pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of services under this Agreement.

11. EFFECTIVE DATE

This Agreement will govern all legal services performed by Gay & Gay on behalf of City. The term of this Agreement shall commence on January 1, 2022, and shall continue in effect until terminated as provided herein.

12. TERMINATION

A. Termination by City:

Gay & Gay shall at all times serve under the terms of this Agreement at the pleasure of the Mayor, and the City hereby reserves the right to terminate this Agreement at will, with or without cause, by providing written notice to Gay & Gay. Upon receipt of any notice of termination, Gay & Gay shall cease all services under this Agreement except as may be specifically approved by the City. At that time, all further obligations of the City to pay Gay & Gay for services rendered under this Agreement shall thereupon cease, except as set forth in Section 12(C) below; provided, however, that the City shall be obliged to pay for all services, costs, and expenditures lawfully incurred by Gay & Gay

prior to the effective date of such termination, or subsequent to the date of termination at the direction of City.

B. Termination by Gay & Gay:

Gay & Gay reserves the right to terminate this Agreement by giving ninety (90) days' advance written notice to City.

C. Mutual Obligations upon Termination by Either Party:

In the event of termination of this Agreement by either party, Gay & Gay shall cooperate with the City in transferring the files and assignments to the City Clerk or other person designated by City pending the hiring of another City Attorney. Gay & Gay shall be compensated at the hourly rates set forth in Section 4 of this Agreement should Gay & Gay be called upon to perform any services after the effective date of termination, including the transfer of files and assignments.

13. NOTICES

Notices regarding this Agreement shall be given in writing to the parties at the following addresses:

City of Taunton

Attn: Shaunna O'Connell, Mayor
City Hall
15 Summer Street
Taunton, MA 027280

Gay & Gay

Attn: Matthew J. Costa, Esquire
73 Washington Street
P.O. Box 988
Taunton, MA 02780

14. AMENDMENT OF AGREEMENT

This Agreement contains all of the agreements of Gay & Gay and the City. This Agreement may be amended at any time by mutual consent of the parties by an instrument in writing.

15. CONFLICTS

If there exists, now or in the future, any conflict between the terms of this Agreement and any local personnel by-law, ordinance, rule, or regulation, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective the 1st day of January, 2022.

City of Taunton
by: Shaunna O'Connell
Shaunna O'Connell, Mayor

Gay & Gay, P.C.
by: Matthew J. Costa
Matthew J. Costa, Esquire

AS TO FORM AND CHARACTER

Matthew J. Costa
Matthew J. Costa, City Solicitor

Ian D. Fortes 1/18/22
Ian D. Fortes, Auditor
Account # 01-157-5200-5304

PD2200347 (REMAINDER OF PG 22)